

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CALGON CARBON CORP.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 08-1355
)	
ADA-ES, INC.,)	
)	
Defendant.)	

MEMORANDUM

Calgon Carbon Corporation has filed an Emergency Motion to Clarify and Enforce the Protective Order [doc. no. 68] in light of the court's February 26, 2010 order [doc. no. 67]. In the February 26th order, the court denied, without prejudice, all pending motions for summary judgment and required that any future summary judgment motions and supporting documents be filed without redaction. The court further set a new schedule for the filing of summary judgment motions, establishing a new deadline for such motions.

According to ADA-ES, Inc., because the court used the phrase "directed to re-file" in setting that new deadline, the parties were only permitted to re-file the exact same summary judgment documents previously filed with redactions [doc. nos. 31-57], but without redactions. As a result, according to ADA-ES, Inc., the stipulated protective order previously entered in this case [doc. no. 18] was voided and the parties were now able to file information previously designated as "Confidential Information" on the public record. ADA-ES, Inc. is incorrect.

The court's February 26, 2010 order did not vacate, terminate, or modify the parties' protective order. Instead, as a consequence for abusing the court's prior instructions regarding filing summary judgment documents under seal [doc. no. 30], the order denied the parties the ability to use the procedures set forth in paragraph 10 of the protective order for purposes of future summary judgment filings. Under paragraph 10, a party can seek leave of court to file documents with the court under seal.

To the extent that there is confusion regarding how to proceed, we offer the following clarification. The parties are free, among other things, to agree between themselves to de-designate some or all of the documents identified as confidential in discovery, to file motions for partial summary judgment so as not to reveal confidential information, to attempt to challenge the other party's confidentiality designations in accordance with paragraph seven of the protective order, if possible, or to forgo filing motions for summary judgment and proceed to public trial of this matter.

To reiterate, the parties shall not violate the terms of the protective order and shall not file on the public docket any documents designated as "Confidential" or "Confidential- Attorneys' Eyes Only" unless the parties agree to, or the court orders, a change in the designation of a document.

The deadline by which the parties must file motions for

summary judgment, if they choose to do so, which they need not, is April 28, 2010. Any opposition to such motions must be filed by May 19, 2010. Any reply briefs shall be filed by May 31, 2010. If a party seeks to exclude the testimony of an expert relied upon in a summary judgment paper, such motion shall be filed no more than seven days after the paper referring to that expert's testimony has been filed. At this time, no other pre-trial deadlines or trial dates established in the October 19, 2009 scheduling order shall be affected by this order [doc. no. 24].

An appropriate order will be filed in conjunction with this memorandum.

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Plaintiff,

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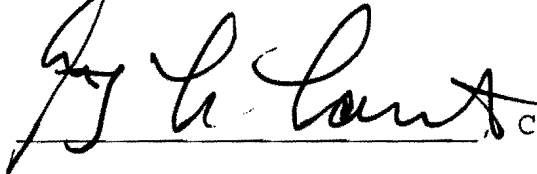
Civil Action No. 08-1355

ORDER

AND NOW, on this 7 day of April, 2010, upon consideration of Calgon Carbon Corporation's Emergency Motion to Clarify and Enforce the Court's April 27, 2009 Protective Order [doc. no. 68] and the documents related thereto, IT IS HEREBY ORDERED that the motion is GRANTED in accordance with the court's memorandum of this same date.

IT IS FURTHER ORDERED THAT Calgon's Motion for Leave to File Reply in Support of that Motion [doc. no. 70] is MOOT.

BY THE COURT:

 C.J.

cc: All Counsel of Record